Case 23-09001 Doc 1 Filed 03/02/23 Page 1 of 9

UNITED STATES BANKRUPTCY COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA GREENSBORO DIVISION

In Re:)
CARGINA DIXON TAYLOR xxx-xx-8464)) Case No. 21-80170 C13-D
2904 Casona Way)
Raleigh NC 27616-5589)
Debtor	Ó
Anita Jo Kinlaw Troxler,))
Standing Trustee)
Plaintiff	Adversary Proceeding No.
VS.)
Carvana LLC)
Defendant.)

COMPLAINT TO AVOID PREFERENCE

Anita Jo Kinlaw Troxler, Standing Trustee (hereinafter "Trustee") complaining of the Defendant, Carvana LLC, alleges and says:

JURISDICTION

- 1. This Court has proper and personal jurisdiction over the subject matter hereof and the parties hereto pursuant to 28 U.S.C. §§151, 157, and 1334, and Standing Order No. 10 entered by the United States District Court for the Middle District of North Carolina on or about August 10, 1984.
- 2. Venue is proper in this District pursuant to 28 U.S.C. §1409 in that this is an action arising in or related to a proceeding arising under Title 11 of the United States Code which is pending in this District, and this is a core proceeding within the meaning of 28 U.S.C. §157.

PARTIES

- 3. On May 5, 2021, Cargina Dixon Taylor (hereinafter "the Debtor") filed a voluntary petition under Title 11 of the United States Code in the United States Bankruptcy Court for the Middle District of North Carolina (hereinafter "the Petition Date").
- 4. Pursuant to order entered by the Court on September 9, 2022, the Trustee, Anita Jo Kinlaw Troxler, was designated as Trustee and is duly qualified and acting as Trustee.
- 5. Upon information and belief, Defendant Carvana LLC is a corporation duly incorporated in the State of Arizona.

CLAIM FOR RELIEF

- 6. On or about May 10, 2021, Carvana LLC filed a proof of claim as a secured creditor in the amount of \$17,795.91 claiming to be secured against a 2017 Mitsubishi, Vehicle Identification Number JA4AP3AW9HZ054113 (hereinafter "the automobile") titled in the name of the Debtor. The electronic lien and title ("ELT") documentation attachment to the claim failed to document the lien date. On December 12, 2022, Carvana LLC filed an amended proof of claim to document the lien the automobile dated February 24, 2021. Attached hereto and incorporated by reference as "Exhibit A" is a copy of the note and security agreement and title.
- 7. On January 22, 2021, the Debtor executed a note and security agreement with Carvana LLC in Raleigh, North Carolina. The note and security agreement were held by Carvana LLC at the time the Chapter 13 petition was filed.
- 8. The Trustee is informed and believes that the Debtor had possession of the automobile on or about January 22, 2021.
- 9. The lien in favor of Carvana LLC was perfected in accordance with North Carolina General Statutes §20-58.2 on February 24, 2021. The documents necessary to perfect the lien in favor of Carvana LLC were delivered to the North Carolina Department of Motor Vehicles on or about February 24, 2021, more than 30 days after the Debtor received possession of the automobile.
- 10. The perfection of Carvana LLC's security interest in the automobile was within 90 days prior to the Petition Date.
- 11. The perfection of the security interest was a transfer of the property of the Debtor and made to or for the benefit of Carvana LLC; for or on account of an antecedent debt; made while the Debtor was insolvent; and enables Carvana LLC to receive more than it would have received if (a) the case were a case under Chapter 7 of Title 11; (b) the transfer had not been made; and (c) Carvana LLC had received payment of such debt to the extent provided by the provisions of Title 11.
- 12. The transfer and perfection of the security interest in the automobile is avoidable by the Trustee pursuant to 11 U.S.C. §547 and by reason of the failure of Carvana LLC to perfect its security interest within 30 days after the Debtor received possession of the automobile, the perfection does not constitute a contemporaneous exchange under 11 U.S.C. §547(c)(1).

WHEREFORE the Trustee prays the Court that:

- 1. The lien of Carvana LLC or its successors in interest or assigns, is avoided pursuant to 11 U.S.C. §547 and the claim of Carvana LLC, or its successors in interest or assigns, is allowed as a general unsecured claim;
- 2. The certificate of title to the automobile be forwarded by Carvana LLC, or its successors in interest or assigns, to the Trustee, to be retained by the Trustee;
- 3. Upon dismissal of the case, the Trustee shall return the certificate of title to Carvana LLC, or its successors in interest or assigns, and the lien of Carvana LLC, or its successors in interest or assigns, is reinstated pursuant to 11 U.S.C. §349(b)(1)(B);
- 4. Upon the conversion of this case to Chapter 7, the Trustee shall deliver the certificate of title to the Chapter 7 trustee, and Carvana LLC, or its successors in interest or assigns, shall be required to release the lien on the title to the automobile;

Case 23-09001 Doc 1 Filed 03/02/23 Page 3 of 9

- 5. Upon this Court entering an Order of discharge of the Debtor in this Chapter 13 case, Carvana LLC, or its successors in interest or assigns, shall be required to release the lien on the title to the automobile; and
 - 6. For such and other further relief that the Court may deem just and proper.

This 2nd day of March, 2023.

s/ Jennifer R. Harris
Jennifer R. Harris
Attorney for Plaintiff
NC State Bar No.: 26857
P.O. Box 1720
Greensboro, NC 27402-1720
Telephone: (336) 378-9164

Page 4 of 9 Filed 17/15/2 Copy View of the Authoritative Copy held by the designated custodian

EXHIBIT A

NC-102 10/1/2019

Retail Installment Contract and Security Agreement

(Consumer Credit Document)

Seller Name and Address
CARVANA, LLC
1631 NAVAHO DR
RALEIGH NC 27609-7532

Buyer(s) Name(s) and Address(es) Cargina Dixon Taylor 2904 Casona Way Raleigh NC 27616-5589

Summary				
No.				
Date	01/22/2021			

☐ Bus	siness, co	mmercial or	agricultural	purpose	Contract.
-------	------------	-------------	--------------	---------	-----------

Truth-In-Lending Disclosure					
Annual Percentage Rate The cost of your credit as a yearly rate.	Finance Charge The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid when you have made all scheduled payments.	Total Sale Price The total cost of your purchase on credit, including your down payment of	
%	\$13,068.02	\$18,074.45	\$31,142.47	\$ 700.00 \$ 31,842,47	
Payment Schedule. Your payment schedule is: No. of Payments Amount of Payments When Payments are Due 71 \$ 433.00 monthly beginning 02/22/21 1 \$ 399.47 01/22/27 N/A c N/A N/A					
Security. You are giving us a security interest in the Property purchased. Late Charge. If all or any portion of a payment is not paid within 10 days of its due date, you will be charged a late charge of \$15.00. Prepayment. If you pay off this Contract early, you will not have to pay a penalty. Contract Provisions. You can see the terms of this Contract for any additional information about nonpayment, default, any required repayment before the scheduled date, and prepayment refunds and penalties.					
Description of Propert	- 10(100)ma				
Year Make 7 2017 Mitsubishi	Model Outlander Sport		Vehicle Identification Number JA4AP3AW9HZ054113	Odometer Mileage	
AND CONTROL OF THE PROPERTY OF		· · · · · · · · · · · · · · · · · · ·	STATE OF THE OF THE	24431	
□ New S Used □ Demo		Other: N/A	J. (1711 G. (1701 L.	24431	
	n	Other:		24431	
☑ Used ☐ Demo	n N/A	Other: N/A Sales Ag N/A Payment: You	reement promise to pay us the principal amount	of	
□ Used □ Demo □ Description of Trade-I		Other: N/A Sales Ag Payment. You p s	reement romise to pay us the principal amount 8,074.45 plus finance o	of charges accruing on the unpaid ar from the date of this Contract	

Case 23-09001 Doc 1 Filed 03/02/23 Page 5 of 9 COPY Filed 17/12/22 COPY New York Copy held by the designated custodian

	temization of Amount Financed		Insurance Dise	closures		
b.	Cash Price of Vehicle, etc. (incl. sales tax of \$479.70) Trade-in allowance	\$17,969.70 \$0.00	Credit Insurance. Credi required to obtain cred provide them unless you insurance, we will obtain the coverages you have	l it and are not a f I sign and agree to I it for you (if you q	factor in the credit de o pay the additional pro qualify for coverage). V	cision. We will not
C.	Less: Amount owing, paid to (includes k): N/A	e N/A	Credit Life			
d.	Net trade-in (b-c; if negative, enter \$0 here and ente	Ψ	☐ Single ☐ Joint	X None		
	the amount on line k)	0.00	Premium \$		Term	N/A
e.	Cash payment	\$ 700.00	Insured			· ·
f .	Manufacturer's rebate	\$ 0.00				
g.	Deferred down payment	\$ 0.00	Credit Disability			
-		s N/A	Single Joint	N/A	Term	N/A
i.	Down Payment (d+e+f+g+h)	¢ 700.00	Insured		N/A	
i.	Unpaid balance of Cash Price (a-i)	\$ 17,269.70	Your signature below me	ans you want (onl	ly) the insurance cove	rage(s) quoted above. If
ر k.	Financed trade-in balance (see line d)	\$ 0.00	"None" is checked, you t	nave declined the	coverage we offered.	
l.	Paid to public officials, including filing fees	\$ 109.75				
m.		0.00			(
	Service Contract, paid to:	V	N/A			N/A
	Carvana	s 1,500.00	Ву:		-A 94	DOB
c.	To; Gap Coverage	§ 695.00	Date:			
p.	To: N/A	s N/A				
q.	To:N/A	\$N/A				
ľ.	To:N/A	A 4 I A	N/A			N/A
s.	To:N/A	§N/A	By:			DOB
t.	To:	\$N/A	Date:			
u.	To:N/A	§ N/A				
٧.	To:N/A	\$N/A				
W.	To:N/A	\$N/A	N/A			N/A
χ,	To:N/A	s N/A	By:			DOB
у.	Total Other Charges/Amts Paid (k thru x)	\$ 2,304.75 \$ 0.00	Date:			
	Prepaid Finance Charge	\$ 0.00 \$ 18,074.45	Property Insurance, You	u must insure the l	Property. You may pu	rchase or provide the
	Amount Financed (j+y-z)	V	insurance through any	insurance compa	any reasonably acce	ptable to us. The collision
We	e may retain or receive a portion of any amounts paid to	o others.	coverage deductible may	not exceed \$	1,000	If you get
			insurance from or throug	h us you will pay \$	\$N/	Afor
				N/A		of coverage.
			This premium is calculate	ed as follows:		
			□ \$ N/A	Deductible, Co	olfision Cov. \$	N/A
			□ \$ N/A	Deductible, Co	omprehensive \$	N/A
			☐ Fire-Theft and Com			
				N/A	\$	N/A
			Liability insurance cove	arage for bodily i	niury and property d	amage caused to
	Time segue in		others is not included i			

will pay \$ _

[This area intentionally left blank.]

☐ Single-Interest Insurance. You must purchase single-interest insurance as part of

_ for ___

this sale transaction. You may purchase the coverage from a company of your choice, reasonably acceptable to us. If you buy the coverage from or through us, you

of coverage.

Case 23-09001 Doc 1 Filed 03/02/23 Page 6 of 2 COPY

DocuSign Enveloped 15/12/24 COPY

Filed 12/12/24 COPY

Filed 12/12/24 COPY

by the designated custodian

Additional Protections

X Service Contract

You may buy any of the following voluntary protection plans. They are not required to obtain credit, are not a factor in the credit decision, and are not a factor in the terms of the credit or the related sale of the Vehicle. The voluntary protections will not be provided unless you sign and agree to pay the additional cost.

Your signature below means that you want the described item and that you have received and reviewed a copy of the contract(s) for the product(s). If no coverage or charge is given for an item, you have declined any such coverage we offered.

Eng Colvins collinate		
Term	48 months	
Price	\$_1,500.00	
Coverage	Carvana	Vehicle Protection
Gap Waiver or Gap Co	verage 72 months	
Term		
Price	\$ 695.00	
Coverage	Gap Coverage	
<u></u>	N/A	
Term	N/A	
Price	\$N/A	
Coverage	N/A	
(argina 1 By: Cargina Dixon Ta	taylor	01/22/2021
By: Cargina Dixon Ta	ylor	Date
N/A		N/A
Ву:		Date
N/A		N/A
Ву:		Date

Additional Terms of the Sales Agreement

Definitions. "Contract" refers to this Retail Installment Contract and Security Agreement. The pronouns "you" and "your" refer to each Buyer signing this Contract, and any guarantors, jointly and individually. The pronouns "we", "us" and "our" refer to the Seller and any entity to which it may transfer this Contract. "Vehicle" means each motor vehicle described in the Description of Property section. "Property" means the Vehicle and all other property described in the Description of Property and Additional Protections sections.

Purchase of Property. You agree to purchase the Property from Seller, subject to the terms and conditions of this Contract. You also agree that the purchase of the Property on credit takes place at the Seller's licensed location identified at the top of page 1 of this Contract. Seller will not make any repairs or additions to the Vehicle except as noted in the Description of Property section.

You have been given the opportunity to purchase the Property and described services for the Cash Price or the Total Sale Price, The "Total Sale Price" is the total price of the Property if you buy it over time.

General Terms. The Total Sale Price shown in the *Truth-In-Lending Disclosure* assumes that all payments will be made as scheduled. The actual amount you will pay will be more if you pay late and less if you pay early.

We do not intend to charge or collect, and you do not agree to pay, any finance charge or fee that is more than the maximum amount permitted for this sale by state or federal law. If you pay a finance charge or fee that exceeds that maximum amount, we will first apply the excess amount to reduce the principal balance and, when the principal has been paid in full, refund any remaining amount to you.

You understand and agree that some payments to third parties as a part of this Contract may involve money retained by us or paid back to us as commissions or other remuneration.

You agree that the Property will not be used as a dwelling.

Prepayment. You may prepay this Contract in full or in part at any time without penalty. Any partial prepayment will not excuse any later scheduled payments. If we get a refund of any unearned insurance premiums that you paid, you agree that we may subtract the refund from the amount you owe, unless otherwise provided by law.

Returned Payment Charge. If you make any payment required by this Contract that is returned or dishonored, you agree to pay a fee of \$35.00.

Governing Law and Interpretation. This Contract is governed by the law of North Carolina and applicable federal law and regulations.

If any section or provision of this Contract is not enforceable, the other terms will remain part of this Contract. You authorize us to correct any clerical error or omissions in this Contract or in any related document.

Name and Location. Your name and address set forth in this Contract are your exact legal name and your principal residence. You will provide us with at least 30 days notice before you change your name or principal residence.

Telephone Monitoring and Calling. You agree that we may from time to time monitor and record telephone calls made or received by us or our agents regarding your account to assure the quality of our service. In order for us to service the account or to collect any amounts you may owe, and subject to applicable law, you agree that we may from time to time make calls and send text messages to you using prerecorded/artificial voice messages or through the use of an automatic dialing device at any telephone number you provide to us in connection with your account, including a mobile telephone number that could result in charges to you.

Default. You will be in default on this Contract (except as prohibited by law) if you fail to perform any obligation that you have undertaken in this Contract.

If you default, you agree to pay our costs for collecting amounts owing, including court costs and fees for repossession, repair, storage and sale of the Property securing this Contract. You also agree to pay reasonable attorneys' fees not in excess of 15% of the outstanding balance owing on the Contract at the time we begin a lawsuit to enforce and/ or collect this Contract.

If an event of default occurs as to any of you, we may exercise our remedies against any or all of you.

Remedies. If you are in default on this Contract, we have all of the remedies provided by law and this Contract. Those remedies include:

- We may require you to immediately pay us, subject to any refund required by law, the remaining unpaid balance of the amount financed, finance charges and all other agreed charges.
- We may pay taxes, assessments, or other liens or make repairs to the Property if you have not done so. We are not required to do so. You will repay us that amount immediately. That amount will earn finance charges from the date we pay it at the post-maturity rate described in the Payment section until paid in full.
- We may require you to make the Property available to us at a place we designate that is reasonably convenient to you and us.
- We may immediately take possession of the Property by legal process or self-help, but in doing so we may not breach the peace or unlawfully enter onto your premises.
- We may then sell the Property and apply what we receive as provided by law to our reasonable expenses and then toward what you owe us.
- Except when prohibited by law, we may sue you for additional amounts if the proceeds of a sale do not pay all of the amounts you owe us.

By choosing any one or more of these remedies, we do not give up our right to later use another remedy. By deciding not to use any remedy, we do not give up our right to consider the event a default if it happens again.

You agree that if any notice is required to be given to you of an intended sale or transfer of the Property, notice is reasonable if mailed to your last known address, as reflected in our records, at least 10 days before the date of the intended sale or transfer (or such other period of time as is required by law).

You agree that we may take possession of personal property left in or on the Property securing this Contract and taken into possession as provided above. You may have a right to recover that property.

If the Property has an electronic tracking device, you agree that we may use the device to find the vehicle.

Pager 1919 A COPY Filed This is a copy view of the Authoritative Copy held by the designated custodian

Obligations Independent. Each person who signs this Contract agrees to pay this Contract according to its terms. This means the following:

- You must pay this Contract even if someone else has also signed it.
- We may release any co-buyer or guarantor and you will still be obligated to pay this Contract.
- · We may release any security and you will still be obligated to pay this Contract.
- If we give up any of our rights, it will not affect your duty to pay this Contract.
- If we extend new credit or renew this Contract, it will not affect your duty to pay this Contract.

Warranty. Warranty information is provided to you separately.

Security Agreement

Security. To secure your payment and performance under the terms of this Contract, you give us a security interest in the Vehicle, all accessions, attachments, accessories, and equipment placed in or on the Vehicle and in all other Property, to the extent permitted by law. You also assign to us and give us a security interest in proceeds and premium refunds of any insurance and service contracts purchased with this Contract.

Duties Toward Property. By giving us a security interest in the Property, you represent and agree to the following:

- You will defend our interests in the Property against claims made by anyone else. You
 will keep our claim to the Property ahead of the claim of anyone else. You will not do
 anything to change our interest in the Property.
- You will keep the Property in your possession and in good condition and repair. You
 will use the Property for its intended and lawful purposes.
- You agree not to remove the Property from the U.S. without our prior written consent.
- You will not attempt to sell the Property, transfer any rights in the Property, or grant another lien on the Property without our prior written consent.
- ♦ You will pay all taxes and assessments on the Property as they become due.
- You will notify us with reasonable promptness of any loss or damage to the Property.
- You will provide us reasonable access to the Property for the purpose of inspection.
 Our entry and inspection must be accomplished lawfully, and without breaching the peace.

Agreement to Provide Insurance. You agree to provide property insurance on the Property protecting against loss and physical damage and subject to a maximum deductible amount indicated in the *Insurance Disclosures* section, or as we will otherwise require. You will name us as loss payee on any such policy. Generally, the loss payee is the one to be paid the policy benefits in case of loss or damage to the Property. In the event of loss or damage to the Property, we may require additional security or assurances of payment before we allow insurance proceeds to be used to repair or replace the Property. You agree that if the insurance proceeds do not cover the amounts you still owe us, you will pay the difference. You will keep the insurance in full force and effect until this Contract is paid in

If you fail to obtain or maintain this insurance, or name us as loss payee, we may obtain insurance to protect our interest in the Property. This insurance may be written by a company other than one you would choose. It may be written at a rate higher than a rate you could obtain if you purchased the property insurance required by this Contract. We will add the premium for this insurance to the amount you owe us. Any amount we pay will be due immediately. This amount will earn finance charges from the date paid at the postmaturity rate described in the *Payment* section until paid in full.

Gap Walver or Gap Coverage. In the event of theft or damage to the Vehicle that results in a total loss, there may be a gap between the amount due under the terms of the Contract and the proceeds of your insurance settlement and deductibles. You are liable for this difference. You have the option of purchasing Gap Walver or Gap Coverage to cover the gap liability, subject to any conditions and exclusions in the Gap Walver or Gap Coverage agreements.

Notices

11

Note. If you purchased the Vehicle primarily for personal, family, household, or agricultural purposes, the following notice applies: NOTICE. ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

If you are buying a used vehicle: The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.

Sí compra un vehículo usado: La información que ve adherida en la ventanilla forma parte de éste contrato. La información contenida en el formulario de la ventanilla prevalece por sobre toda otra disposición en contrario incluida en el contrato de comparventa.

Third Party Agreement

(This section applies ONLY to a person who will have an ownership interest in the Property but is NOT a Buyer obligated to pay this Contract ("Third Party Owner").)

In this section only, "you" means only the person signing this section.

By signing below you agree to give us a security interest in the Property described in the Description of Property section. You also agree to the terms of this Contract except that you will not be liable for the payments it requires. Your interest in the Property may be used to satisfy the Buyer's obligation. You agree that we may renew, extend or change this Contract, or release any party or Property without releasing you from this Contract. We may take these steps without notice or demand upon you.

You acknowledge receipt of a completed copy of this Contract.

N/A	N/A
By:	Date
Signature of Third Party Owner (NOT the Buyer)	

[This area intentionally left blank.]

Buyer Cargina Taylor 01/22/2021 By: Cargina Dixon Taylor Date N/A N/A By: Date N/A N/A By: Date Seller 01/22/2021 By: CARVANA, LLC Date

MVR-191 (Rev. 01/2017)

CERTIFICATE OF TITLE

VEHICLE IDENTIFICATION NUMBER JA4AP3AW9HZ054113

TITLE NUMBER 7.7886521055672H YEAR MODEL

TITLE ISSUE DATE 10/19/2022

PREVIOUS TITLE NUMBER

CARVANA

PO BOX 2997

ODOMETER READING

024431

ODOMETER STATUS

TITLE BRANDS

PHOENIX

OWNER(S) NAME AND ADDRESS

CARGINA DIXON TAYLOR 2904 CASONA WAY RALEIGH 27616-5589



The Commissioner of Motor Vehicles of the State of North Carolina hereby certifies that an application for a certificate of title for the herein described vehicle has been filed pursuant to the General Statutes of North Carolina and based on that application, the Division of Motor Vehicles is satisfied that the applicant is the lawful owner. Official records of the Division of Motor Vehicles reflect vehicle is subject to the liens, if any, herein enumerated at the date of issuance of this certificate.

As WITNESS, his hand and seal of this Division of the day and year appearing in this certificate as the title issue date.

COMMISSIONER OF MOTOR VEHICLES

FIRST LIENHOLDER:

PO BOX 29002 PHOENIX AZ 85038-9002 DATE OF LIEN 02/24/2021

LIEN RELEASED BY:

SIGNATURE

SECOND LIENHOLDER

LIEN RELEASED BY:

SIGNATURE.

DÄTE

LIEN RELEASED BY:

SIGNATURE.

FOURTH LIENHOLDER:

DATE OF LIEN

LIEN RELEASED BY:

SIGNATURE.

112560711

ADDITIONAL LIENS: